IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9829 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

NAZIRKHAN AKBARKHAN PATHAN

Appearance:

MR HARDIK C RAWAL for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/04/2000

ORAL JUDGEMENT

Heard the learned advocates for the parties.

Rule. Service of rule is waived by Mr. Brahmbhatt,the learned advocate appearing for the

respondent workman. On the facts and in the circumstances of the case, the matter is taken up for final hearing today itself.

In this petition, the petitioner has challenged the award dated 14.6.1999 passed by the Labour Court Vadodara whereby the respondent workman was directed tobe reinstated in service with fifty per cent of the back wages for the intervening period. Brief facts leading to the filing of the present petition are as under:

The respondent was working with the petitioner corporation as a Driver. On 14.2.1993, the father of the respondent was having some chest pain and, therefore, for submitting leave report, the respondent had went with the father and on that occasion, there was some misbehavior with the Depot Manager and misbehaviour with the ATI working in the depot and threat was given by the respondent workman. On the basis of the said allegation, chargesheet was served to the respondent workman and reply thereto was submitted on 3rd August, 1993 and, thereafter, departmental inquiry was initiated against the respondent and thereafter, the respondent was dismissed from service on 7.6.1994 by the competent authority which order was challenged by the respondent before the labour court by filing reference no. 157 of 1995. Before the labour court, the corporation has produced documentary evidence on record and the workman was examined. The workman has deposed that he was working for more than 12 years with the corporation and that he remained unemployed during the intervening period and, thereafter, the labour court examined the merits of the matter. The labour court, while exercising the powers under sec. 11A of the ID Act, the labour court has granted reinstatement with continuity of service and 50% of the back wages for the intervening period vide judgment and award dated 14.6.1999. Said judgment and award has been challenged by the petitioner by this petition.

In this petition, the respondent workman has filed affidavit in reply.

Learned advocate Mr. Raval has submitted that since the labour court has come to the conclusion that the allegations in respect of misbehaviour and giving threat to the ATI is found to have been proved, the labour court ought not to have directed the petitioner to reinstate the respondent workman with fifty per cent of the back wages for the intervening period. He has further submitted that in view of the facts of the

present case, the labour court has erred in exercising the powers under sec.11A of the ID Act. He has further submitted that such person cannot be reinstated in service when there was allegation of misbehavior with the superior officer.

On the other hand, learned advocate Mr. Brahmbhatt has submitted that the respondent had gone in the office with his father AK Pathan, driver, who was having chest pain for submitting leave report of his father and at that time, the ATI who was on duty has not accepted the report and has not cooperated and has also misbehaved with them and there was some difficulty because his father was unable to attend the job and yet, ATI Shri Khohkhar insisted that the father of the respondent must resume and go for work which was objected by the respondent on the ground that his father is not well and he is having chest pain However, this request was not considered by the ATI Shri Khokhar and therefore, ATI Shri Khokhar has submitted false report against the respondent workman. According to him, past record of the respondent workman was not produced before the labour court. According to the learned advocate Mr. Brahmbhatt, the labour court was justified in exercising the powers under sec.11A of the ID Act. He has submitted that this court should not interfere with such impugned award passed by the labour court in so far as the reinstatement of the respondent workman is concerned. He has further submitted that the respondent workman has no objection if this Court pass appropriate orders in so far as the backwages for the intervening period is concerned but this court should not interfere with the reinstatement of the respondent workman. He has submitted that he is leaving the question of back wages for the intervening period at the discretion of this court.

I have considered the submissions made by both the learned advocates. I have also perused the impugned award and the papers on record. I am of the opinion that the labour court was justified in reinstating the respondent workman with continuity of service while exercising the powers under section 11A the ID Act. The labour court, after considering the facts and circumstances of the case, found that the impugned order of dismissal from service was harsh and excessive and the petitioner was not justified in passing such an order. The labour court was justified in making such observation. However, looking to the alleged misconduct of the respondent, I am of the view that the labour court is not justified in granting reinstatement with fifty per

cent of the back wages for the intervening period. In the facts and circumstances of the case and also in view of the statement made at the Bar by Mr. Brahmbhatt, the back wages for the intervening period are required to be reduced. I am of the view that it would be just and proper if the petitioner is directed to reinstate the respondent workman in service with 25% of the back wages for the intervening period, instead of 50% per cent as granted by the labour court. Thus, in so far as the reinstatement is concerned, same does not require any interference but back wages for the intervening period are required to be reduced as aforesaid, in the facts and circumstances of the case. Therefore, the impugned award passed by the labour court is required to be modified to the extent indicated hereinabove. Therefore, I pass the following order.

Petition is partly allowed. The petitioner corporation is directed to reinstate the respondent workman in service with continuity of service and with 25% of the back wages for the intervening period. The impugned award passed by the labour court shall stand modified to the extent indicated hereinabove. Rule is made absolute accordingly with no order as to costs.

Since I have partly allowed this petition and have modified the impugned award in respect of backwages alone, in the interest of justice, the petitioner corporation is directed to reinstate the respondent workman in service within four weeks from the date of receipt of certified copy of this order. The petitioner is further directed to pay 25% of the back wages for the intervening period within eight weeks from the date of receipt o f certified copy of this order. The petitioner is further directed to pay full wages to the respondent workman from the date of the impugned award 14.6.1999 till the date of actual reinstatement of the respondent workman within eight weeks from the date of receipt of certified copy of this order.

25.4.2000. (H.K. Rathod,J.)

Vyas